

is required in the national interest by the circumstances of a particular program, and (ii) that performance of the contract will not interfere with the primary business of the subsidized carrier which is to provide air transportation in the United States. In the latter connection, it is to be recognized that participation with maximum effectiveness in a technical assistance program would not only divert the attention of top management from certificated services but might also involve the assignment of the most competent senior operational and technical personnel, the diversion of funds at least on a short-term basis, and the possible transfer from certificated services of aircraft and related equipment. Normally, therefore, unless substantial evidence and arguments are produced to the contrary, participation by subsidized carriers in technical assistance programs will be considered inconsistent with the public interest.

[PS-22, 29 FR 5788, May 1, 1964]

Subpart I—Policies Relating to Disclosure of Information

§ 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

(a) By Executive Order 11920, 41 FR 23665 (June 11, 1976), effective July 11, 1976, the President has authorized the issuance for public inspection of decisions by the Board in cases where the action of the Board is subject to the review or approval of the President in accordance with section 801 of the Federal Aviation Act. In the interest of national security, and in order to allow for consideration of appropriate action under Executive Order 11652, Executive Order 11920 provides that decisions shall be withheld from public disclosure for five days after submission to the President but may be released on or after the sixth day following receipt by the President as to all unclassified portions of the text if the Board is not notified by the Assistant to the President for National Security Affairs or his designee that all or part of the decision shall be withheld from public disclosure.

(b) It is the policy of the Board to release to the public all decisions by the Board in section 801 cases as promptly as possible following submission of such decision to the President. Upon receipt of notice by the Assistant to the President for National Security Affairs as required by the Executive Order, the Board shall promptly provide one copy for public inspection in the Docket Section and one copy for public inspection and copying in the Public Reference Room, and shall promptly thereafter print and process the decision for more general distribution in accordance with Board procedures. Where the Board is required to withhold portions of the text of its decision it shall make public those portions of its decision which may be publicly released. Where the Board is required to withhold public release of its decision in its entirety it shall nonetheless publicly indicate that its decision has been transmitted to the President. The Board shall not publicly indicate that its decision has been transmitted to the President in those cases in which the Assistant to the President for National Security Affairs or his designee determines that classification of the existence of the decision is appropriate and so informs the Board. The provisions are also applicable to decisions submitted to the President for review pursuant to section 801(b) of the Act.

[PS-72, 41 FR 46291, Oct. 20, 1976]

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

AUTHORITY: Secs. 102, 105, 204, 401, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 740, 743, 754, 758, 771; 49 U.S.C. 1302, 1305, 1324, 1371, 1373, and 1386.

SOURCE: PS-83, 44 FR 9951, Feb. 15, 1979, unless otherwise noted.

§ 399.110 State economic regulation of federally authorized carriers prohibited.

(a) Section 105 of the Act states, that except as provided in paragraph (b) of this section, no State or political subdivision thereof and no interstate agency of two or more States shall enact or

Office of the Secretary, DOT

§ 399.120

enforce any law, rule, regulations, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier having authority under Title IV of the Act to provide interstate air transportation.

(b) Except with respect to air transportation (other than charter air transportation) provided pursuant to a certificate issued by the Board under section 401 of the Act, the provisions of paragraph (a) shall not apply to any transportation by air of persons, property, or mail conducted wholly within the State of Alaska.

(c) Except for air transportation conducted wholly within the State of Alaska, any air carrier holding an effective certificate of public convenience and necessity issued pursuant to section 401 or 418 of the Act, an exemption from those sections pursuant to part 298 of this chapter, or any other authority under Title IV of the Act to provide interstate air transportation qualifies as a federally authorized carrier for purposes of the preemption of State regulation under this subpart.

(d) Examples of regulatory actions preempted under this section include, but are not limited to, tariff filing, certification, regulations governing flight frequency, mode of operation, in-flight amenities, liability, insurance, bonding, and capitalization.

(e) [Reserved]

(f) This subpart shall not limit the authority of any State or political subdivision thereof or any interstate agency or other political agency of two or more States, as the owner or operator of any airport served by any air carrier certificated by the Board, to exercise its proprietary powers and rights, when such exercise is reasonable, nondiscriminatory, nonburdensome to interstate commerce, and de-

signed to accomplish a legitimate State objective in a manner that does not conflict with the provisions and policies of the Act.

[PS-83, 44 FR 9951, Feb. 15, 1979, as amended by Docket No. 47939, 57 FR 40106, Sept. 2, 1992]

§ 399.111 All operations of federally authorized carriers to be regulated by the Board.

(a) All operations of Federally authorized carriers are subject to the requirements of Title IV of the Act, including certification and tariff-filing requirements, unless otherwise exempted from one or more of those requirements by Board order or regulation.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received from the Board under Title IV of the Act, until suspended, amended, or terminated as provided under such title.

Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificates in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]